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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

DEFENDERS OF WILDLIFE; and
NATURAL RESOURCES DEFENSE
COUNCIL,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; UNITED STATES BUREAU

)
) CV-15-14-GF-BMM
)
) **PLAINTIFFS' UNOPPOSED**
) **MOTION TO FILE A SUR-**
) **REPLY AND TO RESET THE**
) **APRIL 19, 2018 SUMMARY**
) **JUDGMENT HEARING**

OF RECLAMATION; and UNITED STATES)
FISH AND WILDLIFE SERVICE,)
)
Defendants,)
)
)
)
and)
)
LOWER YELLOWSTONE IRRIGATION)
PROJECT BOARD OF CONTROL,)
SAVAGE IRRIGATION DISTRICT, and)
INTAKE IRRIGATION DISTRICT,)
)
Defendant-Intervenors.)

Pursuant to L.R. 7.1(d)(1)(D), Plaintiffs Defenders of Wildlife and Natural Resources Defense Council hereby respectfully move this Court for leave to file a sur-reply in support of their cross-motions for summary judgment to address the Ninth Circuit’s April 4, 2018 ruling on this Court’s preliminary injunction order (ECF No. 185) and Defendants’ arguments regarding the ruling. This Court set a hearing on the parties’ cross-motions for summary judgment for April 19, 2018 at 1:30 pm, one week after Federal Defendants and Defendant-Intervenors’ respective replies in support of their cross-motions are due. See ECF No. 176, 184. Federal Defendants and Defendant-Intervenors will have an opportunity to address the Ninth Circuit’s intervening ruling in these reply briefs. In order to provide Plaintiffs with an opportunity to address this ruling and Defendants’ arguments regarding the ruling, and to provide the Court with an opportunity to review the

parties' arguments prior to the hearing, Plaintiffs respectfully request that the Court authorize Plaintiffs to file a sur-reply within one week of Defendants' replies (April 19, 2018) and that the Court re-set the hearing after this date. **Plaintiffs' counsel have conferred with counsel for all other parties, and Federal Defendants and Intervenors do not oppose the relief sought herein so long as the hearing is re-set within two weeks of its original date.** Lead counsel for all parties could attend a hearing on April 26, April 30, or May 1 within that time frame.¹

Plaintiffs believe that this approach will ensure judicial efficiency and economy by providing the Court with advanced notice of all parties' positions concerning the Ninth Circuit's ruling prior to the newly calendared hearing. There is also good cause for the relief sought in this motion because it ensures that Plaintiffs are afforded a sufficient opportunity to address new arguments raised for the first time in Defendants' reply briefs as a result of the Ninth Circuit's intervening decision, and it ensures that the Court is subsequently afforded an opportunity to review and consider all of the parties' arguments before the summary judgment hearing.

¹ Although these three dates work for lead counsel for Plaintiffs, Federal Defendants, and Intervenors, local counsel for Plaintiffs (Michelle Uberuaga) would be unable to attend the hearing if it is set for May 1 due to other obligations. Accordingly, Plaintiffs respectfully request that the Court excuse Ms. Uberuaga from appearing in person at the hearing if it is set for May 1.

Accordingly, to avoid prejudice to Plaintiffs and for good cause shown, Plaintiffs respectfully request that the Court: (1) authorize Plaintiffs to file a sur-reply by April 19, 2018 addressing the Ninth Circuit's ruling and Defendants' arguments related to it; and (2) reset the summary judgment hearing for April 26, April 30, or May 1.

Respectfully submitted this 9th day of April,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served today via the Court's CM/ECF system on all counsel of record.

/s/William S. Eubanks II
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